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3 **UNITED STATES DISTRICT COURT**  
4 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

5 THAT ONE VIDEO  
6 ENTERTAINMENT, LLC, a California  
7 limited liability company,

8 Plaintiff,

9 vs.

10 KOIL CONTENT CREATION PTY  
11 LTD., an Australian proprietary limited  
12 company doing business as NOPIXEL;  
13 MITCHELLE CLOUT, an individual;  
14 and DOES 1-25, inclusive,

15 Defendants.

CASE NO: 2-23-cv-02687 SVW (JCx)

DECLARATION OF GARRY  
KITCHEN

[Assigned to the Hon. Stephen V.  
Wilson; Ctrm 10A]

16 **DECLARATION OF EXPERT WITNESS GARRY KITCHEN**

17 I, Garry Kitchen, am a citizen of the United States, over the age of eighteen, not a  
18 party nor an attorney for any party in this action, and have personal knowledge of  
19 the facts stated herein, unless stated on information and belief, and if called upon  
20 to testify to those facts I could and would competently do so as set forth herein.

21 1. I have been retained by Defendants KOIL CONTENT CREATION  
22 PTY LTD., dba as NOPIXEL; MITCHELLE CLOUT, et al, and their counsel,  
23 MORRISON COOPER LLP, to provide my independent professional opinions as  
24 a technical expert and testifying witness in this matter.

25 2. I understand that this is a business dispute between Plaintiff That One  
26 Video Entertainment, LLC. ("TOVE" or "Plaintiff") and Defendant KOIL  
27 CONTENT CREATION PTY LTD. ("KOIL" or "NOPIXEL" or "Defendant")  
28

1 regarding a disagreement between the parties concerning computer software  
2 developed in part by Daniel Tracey ("Mr. Tracey") during the time that he was  
3 involved with the NOPIXEL SERVER multiplayer gaming community.

4 3. My understanding of the case is as follows. Mr. Tracey joined the  
5 NOPIXEL SERVER community as an unpaid volunteer in early 2020, at which  
6 time he agreed to the community's *terms and rules*; (see MC 0044-MC 0046).

7 4. In or around May of 2021, Mr. Tracey came to an agreement with  
8 KOIL/NOPIXEL to develop computer software for the system in exchange for  
9 compensation of \$10,000 per month.

10 5. Approximately five (5) months later, in or around October of 2021,  
11 Tracey allegedly became an employee of TOVE, while continuing to develop  
12 software for KOIL/NOPIXEL.

13 6. Around the end of December of 2022, Mr. Tracey was terminated by  
14 KOIL/ NOPIXEL. Upon his departure, KOIL/NOPIXEL continued to use Mr.  
15 Tracey's work product under the "non-exclusive, permanent, irrevocable, unlimited  
16 license" granted under the *terms and rules* to which Mr. Tracey agreed. *id.*

17 7. Plaintiff TOVE has claimed that an agreement existed between TOVE  
18 and KOIL/NOPIXEL wherein TOVE would be paid 50% of NOPIXEL's game  
19 revenue as compensation for the computer software development performed by Mr.  
20 Tracey. TOVE claims (through counsel) that "Mr. Tracey designed and created the  
21 entire payment processing system utilized by the NoPixel Server, which has  
22 facilitated the processing of millions of dollars in payments to Defendants." (see  
23 *First Amended Complaint*, 3:18-21).

24 8. TOVE's expert claims that the code developed by Mr. Tracey  
25 "provides significant functionality related to the monetization, security and user  
26 management necessary to run the GAME as played today on the NOPIXEL  
27 SERVER.;" and also that the Tracey code "provides the means for the players to  
28

1 pay to play, and more generally a means for the business and operations of the  
2 GAME as it is played on the NOPIXEL SERVER to be run and maintained." (see  
3 *Francis Expert Report - 593 - P's Expert Witness Disclosure - 061724 (final).pdf*,  
4 pg. 6, pg. 12).

5 9. As an expert in video games and computer software, I have been asked  
6 to inspect the code that was written by Mr. Tracey, as well as the code that  
7 comprises the KOIL/NOPIXEL Github Repositories that run the NOPIXEL  
8 SERVER environment. I have been asked to opine on the claims offered by  
9 Plaintiff and their expert regarding the capabilities and importance of the Tracey  
10 code, and to rebut additional opinions offered in the expert report submitted by  
11 William J. Francis on behalf of the Plaintiff. (see *593 - P's Expert Witness*  
12 *Disclosure - 061724 (final).pdf*)

13 10. I have also been asked to file a rebuttal to a Supplementary Expert  
14 Report filed by Mr. Francis on behalf of the Plaintiffs on July 24, 2024. My rebuttal  
15 response can be found in Section VI on page 21 of this declaration.  
16

### 17 SUMMARY OF EXPERTISE

18 11. I am an engineer, video game designer, entrepreneur, and consultant.  
19 I received a Bachelor of Science in Electrical Engineering in 1980 from Fairleigh  
20 Dickinson University, where I was awarded membership in the Eta Kappa Nu  
21 Honor Society, and the Electrical Engineering and Computer Engineering Honor  
22 Society of the Institute of Electrical and Electronic Engineers (IEEE). As an  
23 Electrical Engineering student, I was twice chosen to receive the Engineering Merit  
24 Scholarship from Panasonic / Matsushita Corporation of Japan, one of the largest  
25 consumer electronics companies in the world.  
26

27 12. My career in the consumer software industry includes over 40 years  
28 of experience running software development and publishing companies, with

1 significant hands-on technical and design experience in all genres of consumer  
2 software, including video games (console, PC retail, download, and online), mobile  
3 apps, and dedicated electronic products. I have been directly involved in the design,  
4 development, and publication of hundreds of consumer software products, across a  
5 breadth of hardware platforms, from the earliest Atari machine through the present-  
6 day Apple iPhone and iPad product line. The commercially released software  
7 products that I have personally developed have generated career sales in excess of  
8 \$350 million.

9 13. In 1979, while still in engineering school, I invented and developed  
10 the handheld electronic game Bank Shot for Parker Brothers, named one of the “10  
11 Best Games of 1980” by OMNI Magazine, and also recognized as one of the year’s  
12 top games by Games Magazine. Bank Shot utilized a customized version of the  
13 American Microsystems (AMI) S-2000 4-bit microprocessor, a state-of-the-art (at  
14 the time) single chip microcomputer. As lead engineer on the project, I was  
15 involved in all aspects of the development, including hardware, software, and game  
16 play. I was awarded U.S. Patent No. 4,346,893 (“Electronic Pool Game”) for the  
17 invention of Bank Shot.  
18

19 14. In 1980, I reverse engineered the hardware and software of the Atari  
20 2600 game platform, developing one of the first third-party compatible games for  
21 the system (Space Jockey).

22 15. In 1982, I designed and programmed the Atari 2600 adaptation of the  
23 hit arcade game Donkey Kong, which achieved revenues in excess of \$100 million  
24 on 4 million units sold, making it one of the top selling video games of 1982.

25 16. From June 1982 to March 1986, I was a Senior Designer for  
26 Activision, Inc., during which time I designed and developed the hit title Keystone  
27 Kapers, which earned a Video Game of the Year – Certificate of Merit from  
28 Electronic Games Magazine in 1983.



1           17. From 1984-85, I developed Garry Kitchen's GameMaker, a suite of  
2 five professional quality design tools connected to an easy-to-use programming  
3 language that allowed novice game makers to create commercial quality video  
4 games. I was named Video Game Designer of the Year in 1985 by Computer  
5 Entertainer Magazine for my work on Garry Kitchen's GameMaker.

6           18. In 1986, I co-founded Absolute Entertainment, Inc. and served as  
7 Chairman, President & CEO until November 1995. Absolute Entertainment, Inc.  
8 was a console game publisher licensed by Nintendo, Sega, Sony, 3DO, and Atari  
9 and was a video game developer of over one hundred marketed titles from 1986 to  
10 1995. Absolute Entertainment was the first North American-based development  
11 studio licensed to develop Nintendo Entertainment System (NES)-compatible  
12 games.

13           19. In 1995, after approximately 17 years in the console and personal  
14 computer gaming industry, I co-founded Skyworks Technologies, Inc., an early,  
15 pioneering online game company. At Skyworks, as President & CEO, I led the  
16 creation of one of the first large-scale online free gaming websites,  
17 Candystand.com, for LifeSavers Candy Company, then a division of Nabisco Inc.  
18 The *Candystand*, launched in 1997, is recognized as one of the first and most  
19 successful examples of *advergaming*, the integration of gaming and advertising.  
20 The Candystand's innovative approach to online marketing was later the subject of  
21 a Harvard Business School case study.

22           20. In 2008, within four months of the launch of the Apple App Store,  
23 Skyworks entered the iPhone app marketplace with the introduction of *Arcade*  
24 *Hoops Basketball*, an iPhone app that I personally developed and programmed.  
25 Arcade Hoops Basketball has been downloaded more than 10 million times on the  
26 Apple App Store. From 2008-2010, as COO of Skyworks, I led development of  
27 over 30 iOS-compatible applications, six (6) of which achieved a #1 rank in the  
28

1 competitive Apple App Store. Skyworks became a leading publisher of apps on the  
2 Apple iOS platform, generating over 50 million total downloads to date.

3 21. From 2010-2012, I served as the Vice President of Game Publishing  
4 for Viacom Media Networks, a division of Viacom Inc., a \$15 billion media  
5 conglomerate whose holdings include BET Networks, MTV, VH1, CMT,  
6 Nickelodeon, Spike TV, Comedy Central and Paramount Pictures. While at  
7 Viacom, I led development of the *Addicting Games* mobile app for the Apple  
8 iPhone, the first Viacom-published app to reach #1 in the Apple App Store. The  
9 Addicting Games mobile app was honored with a 2012 Webby Award in the  
10 category of Games (Handheld Devices). The Addicting Games mobile app was the  
11 seventh (7th) iPhone-compatible game developed personally by me or under my  
12 direct supervision that had risen to #1 in the Apple App Store, a marketplace with  
13 over 2 million individual titles.

14 22. During my career, I have been the recipient of numerous accolades for  
15 my contributions to the field of software development and interactive  
16 entertainment, including multiple Lifetime Achievement Awards in Video Games  
17 and a nomination as a New Jersey Entrepreneur of the Year Finalist, given by Inc.  
18 Magazine, Merrill Lynch and Ernst & Young.

19 23. I have spoken as an expert in the areas of electronic entertainment,  
20 mobile app development, video game development, online gaming and interactive  
21 advertising at many industry events, including the Qualcomm Q-Tech Forum,  
22 Consumer Electronics Show, National Cable Show, Digital Media Summit, Game  
23 Developers Conference (GDC), Digital Hollywood, iMedia Breakthrough Summit,  
24 Gamer Technology Conference, Classic Gaming Expo, Casual Connect, Portland  
25 Retro Gaming Expo, Advertising in Gaming Conference, DMExpo, and the VNU  
26 Digital Marketing Conference.  
27  
28

1           24. I have been interviewed in numerous print and online publications,  
2 including Bloomberg Business, Retro Gamer Magazine, Atarian Magazine, Wired,  
3 Video Game Collector, Electronic Games Magazine, Retro Magazine, 3-2-1  
4 Contact, Fast Company, and Business 2.0. I have also been interviewed a number  
5 of times in the broadcast media, having appeared on the Dr. Fad Show, All Access  
6 Television, CNN Real News for Kids, Good Morning Atlanta, ABC Eyewitness  
7 News, NBC's Sunday Today in New York, and CNN FN Entrepreneurs Only.  
8 Additionally, my work is recognized in a number of documentary films recounting  
9 the history of the video game industry, including *World 1-1*, *Atari: Game Over*,  
10 *Unlocked: The World of Games Revealed*, *The Artists: The Creative Visionaries*  
11 *Behind the Rise of the Modern Video Game*, *Atari 50: The Anniversary*  
12 *Celebration*, and *Batteries Not Included*, “a documentary about the genius behind  
13 that thing you had when you were a kid...”

14           25. I have served numerous times as a technical expert in matters related  
15 to software development, mobile application development, and video games. My  
16 clients in these cases have included some of the largest technology and  
17 entertainment companies in the world, including Sony Computer Entertainment,  
18 Nintendo, Microsoft, Apple, Hasbro, Konami Digital Entertainment, Ubisoft,  
19 Activision, LEGO and Zynga.

20           26. My education, professional experience and case history as an expert  
21 witness are described in my Curriculum Vitae, attached as Exhibit 1 hereto,  
22 incorporated herein by reference.

23           27. All attached exhibits are specifically incorporated herein by  
24 reference.

25           28. I have performed in a business and technical management role in the  
26 publication of hundreds of commercial software products. In addition, I have had  
27 direct involvement in the development of over 80 commercial software products,  
28

1 either as designer, co-designer, software author or co-author. A list of these  
2 published titles is included in **Exhibit 1**.

### 4 SUMMARY OF FINDINGS

5 29. My opinions and the bases for them are set forth herein, a summary of  
6 which is:

7 A. Plaintiff and their expert William Francis grossly  
8 overstate the importance and capabilities of the software  
9 code developed by Mr. Tracey. In fact, the impressive  
10 financial and business operation capabilities that they  
11 attribute to Mr. Tracey's code are in fact the result of  
12 NOPIXEL's deployment of TEBEX, a successful third-  
13 party game monetization engine that has been deployed  
14 as NOPIXEL's transactional partner since June of 2021,  
15 well before Mr. Tracey wrote the code in question.

16 B. Mr. Francis' methodology which proports to assign a  
17 percentage of contribution to the overall project of Mr.  
18 Tracey's code is incorrect and fraught with inaccuracies.  
19 Based on my calculations, a more accurate percentage of  
20 contribution for Mr. Tracey's code as compared to the  
21 entire NOPIXEL project is 0.57%.

22  
23 30. A summary of my opinions specific to Mr. Francis' Supplemental  
24 Report is:

25 A. I disagree with Mr. Francis' stated opinion that "it is  
26 possible, and in more than one way," that the codebase  
27 that has been examined in this case, running under  
28 normal operation, would allow a player to join and play

1 on the NOPIXEL SERVER without having to complete  
2 the entire STANDARD ONBOARDING flow.

3 **B.** Regarding Mr. Francis' Scenario A, I disagree that the  
4 process he proposes would allow a user to access and  
5 play the NOPIXEL server without having to complete the  
6 entire STANDARD ONBOARDING flow. Additionally,  
7 in my opinion, the process proposed in Scenario A would  
8 not have been possible during the timeframe in which  
9 Mr. Tracey registered with the NOPIXEL community.

10 **C.** Mr. Francis' Scenario B is not a valid answer to the  
11 question being asked, as it suggests having a third party,  
12 such as an ADMIN, run software routines that would not  
13 normally be running during the registration and login  
14 onboard process.

15 31. There are numerous false claims that have been made about the  
16 alleged code that Mr. Tracey authored during his time working on the NoPixel  
17 project. For example, Plaintiff's attorneys states: "Mr. Tracey designed and created  
18 the entire payment processing system utilized by the NoPixel Server, which has  
19 facilitated the processing of millions of dollars in payments to Defendants." (see  
20 *First Amended Complaint, page 3*).

21  
22 32. Additionally, Plaintiff's Expert William Francis claims in his report  
23 that: Mr. Tracey's BACKEND CODE "provides significant functionality related to  
24 the monetization, security and user management necessary to run the GAME as  
25 played today on the NOPIXEL SERVER." (see *Francis Expert Report, page 6*,  
26 *Opinion No. 8*).



1           36. A review of Mr. Francis' report reveals that, as of February 2022, not  
2 only was Tracey's BACKEND CODE not complete (as it is referred to as "code he  
3 was developing"), but in fact, as of February of 2022, it appears that he was just  
4 getting started on it, as he "seemed to be increasing his contributions and  
5 responsibilities for Koil" and was just "setting up his own personal REPOSITORY"  
6 to store the BACKEND CODE he was developing. And, according to Mr. Francis,  
7 any claims he or Plaintiff makes about the functionality of DANNY's BACKEND  
8 CODE (aka the MANAGEMENT API & DASHBOARD) refers to this code, and  
9 this code only.

10           37. Therefore, all of the claims listed above, i.e., (1) that Tracey designed  
11 and built the entire payment processing system utilized by the NoPixel Server, (2)  
12 that Tracey's BACKEND CODE provides significant functionality related to the  
13 monetization, security and user management necessary to run the GAME, and (3)  
14 that Tracey's BACKEND CODE provides all of the services listed on page 12 of  
15 Mr. Francis' report - are referring to Tracey's BACKEND CODE, which was not  
16 complete as of February 2022.

17           38. Based on these facts, there is no way that Tracey's BACKEND CODE  
18 performs as claimed by the Plaintiffs.  
19

20           39. In fact, Mr. Tracey could not have designed and created the entire  
21 payment processing system utilized by the NoPixel Server because NoPixel's  
22 current 3rd party payment processing solution - TEBEX - has been running in the  
23 NoPixel project since approximately June of 2021, well before Tracey's alleged  
24 BACKEND CODE was even started.

25           40. The NoPixel Servers use TEBEX, a well-established U.K.-based  
26 payment processing system. TEBEX is a 3rd party financial transactional system,  
27 part of Overwolf, an Israel-based software company which is known for the  
28 Overwolf Game SDK and framework, used by game developers and publishers to



1 add user generated content features to online games. Overwolf is backed by  
2 investors including Intel Capital, Insight Partners, Ubisoft, and Samsung, having  
3 raised over \$150M in investment capital to date. (see  
4 <https://www.overwolf.com/about-overwolf/>).

5 41. Software companies such as NoPixel, who are focused on delivering  
6 a specific, very specialized type of software product to a demanding customer base,  
7 would not be well served to use their valuable technical resources to "design and  
8 create an entire payment processing system" when there are a large number of  
9 companies who specialize in delivering that sort of service to companies who  
10 require such functionality. Vendors such as Paypal, Square, Paddle, TEBEX, and  
11 others have built robust, large-scale, proven systems to handle every possible  
12 transactional need of an online business.

13 42. The TEBEX payment platform was first deployed by NoPixel in June  
14 of 2021. The initial install was performed by developer nikez, with first payments  
15 being processed on June 4, 2021. This is confirmed through a search of the Github  
16 history for the NOPIXEL platform. Specifically, nikez submitted the TEBEX  
17 implementation code as part of a large commit corresponding to the commit hash  
18 a37f81bd8a46b44ce60635cdbe5fcca95d5707ea. A copy of the detail reflecting the  
19 foregoing facts are set forth on **Exhibit 2**.

20 43. To further confirm that this commit was associated with implementing  
21 TEBEX as the system's payment platform, I include an excerpt from one of the files  
22 involved in this commit, entitled tebex/hooks.ts. This excerpt is attached hereto as  
23 **Exhibit 3**.

24 44. The file hooks.ts depicted on **Exhibit 3** refers to "hooks" (API calls)  
25 in the transactional system that allow for businesses (such as NOPIXEL) to access  
26 the TEBEX transactional processing software. Specialized software vendors such  
27 as TEBEX supply standalone software platforms to companies in such need, with  
28

1 the system configured with a technical software interface (an Application  
2 Processing Interface, or API) which enables a company's software to "talk to" the  
3 3rd party transactional program to execute transactions, payments, sales, returns,  
4 and the like. Note the red highlight boxes, which call attention to certain TEBEX  
5 financial functions and data such as ProcessCompletedPayment(tebexPayment:...),  
6 TebexPaymentData, tbxPurchaseData, etc.

7 45. The work that NoPixel had to perform in June of 2021 involved  
8 writing code to connect the NoPixel business-side software to TEBEX through the  
9 supplied "hooks," or API. As evidenced by this commit (**Exhibit 3**), the work was  
10 performed by nikez. Mr. Tracey's BACKEND CODE, as referenced by Mr.  
11 Francis, had nothing to do with the initial setup of the payment system as said  
12 BACKEND CODE of Mr. Tracy didn't exist in June of 2021.

13 46. In addition, a review of NOPIXEL's most recent Terms of Service,  
14 last updated December 27, 2023  
15 (<https://www.nopixel.net/upload/index.php?help/np-terms-of-service/>) confirms  
16 that TEBEX is still the payment processing service used by NOPIXEL. Quoting  
17 the TOS, "If you wish to purchase anything via the nopixel Store, you must do so  
18 through Tebex." The applicable terms of service are attached hereto as **Exhibit 4**.  
19

20 47. Therefore: Mr. Tracey never *"designed and built an entire payment*  
21 *processing system utilized by the NoPixel Server, which has facilitated the*  
22 *processing of millions of dollars in payments to Defendants."*

23 48. In addition, Mr. Francis' claim that Mr. Tracey's BACKEND CODE  
24 provides the services listed above (*paragraph 32 of this declaration*) is simply not  
25 true, confirmed by the fact that Mr. Francis fails to cite any files, functions, or other  
26 code as proof of the claimed functionality.

27 49. On the other hand, as a full-service system for online game  
28 monetization, including transactional, financial, and site/content management

1 tools, TEBEX's NOPIXEL deployment provides virtually all the functionality  
2 listed above, the sum of which is accurately characterized by Mr. Francis as  
3 "provid[ing] the means for the players to pay to play, and more generally a means  
4 for the business and operations of the GAME as it is played on the NOPIXEL  
5 SERVER to be run and maintained." (see *Francis Expert Report*, pg. 12).

6 50. The images shown on **Exhibit 5** are featured on the TEBEX product  
7 website (<https://www.tebex.io/game-servers-products-and-solutions>) and show  
8 just a few of the modules and capabilities of a representative TEBEX deployment,  
9 featuring a storefront and shopping cart (login, purchases, registration,  
10 internationalization), and control panel (auditing, sales results, monitoring,  
11 deployment).

12 51. In summary, the impressive financial and business operation  
13 capabilities Plaintiff and their expert have attributed to Mr. Tracey's code are in  
14 fact the result of NOPIXEL's deployment of TEBEX, which has been deployed as  
15 NOPIXEL's transactional partner since June of 2021, well before Mr. Tracey wr  
16 ote the code in question.  
17

18  
19 **TESTIMONY RE: PLAINTIFF EXPERT'S IMPROPER MATH AND**  
20 **CALCULATIONS**

21 52. A primary goal of Mr. Francis' analysis was to put a percentage  
22 number on Tracey's contribution to the NOPIXEL project. Whether that is a right  
23 or wrong way to determine value, the theory was (I believe) if a project was 10,000  
24 lines of code (or submits/revisions/whatever metric) and Danny was responsible  
25 for 5,000 of those, then his contribution would be calculated at 50%. And if the  
26 hypothetical 10,000 line project made \$100,000, then Plaintiff would negotiate for  
27 50% of the revenue, or \$50,000. In theory, it's a simple calculation - one  
28 individuals' total effort/lines/submissions/etc. divided by the total

1 effort/lines/submissions/etc. in the entire project, e.g. 5,000 lines / 10,000 lines = .5  
2 or 50%. Mathematically, the numerator (top number of the fraction) is the effort by  
3 one individual, while the denominator (bottom number of the fraction) is the entire  
4 effort expended on the project - a traditional percentage calculation.

5 53. I do not advocate this method as applied to this dispute; and I do not  
6 feel that a programmer should be compensated a percentage of revenue based on  
7 his effort as it relates to the project whole. I am simply explaining what I believe  
8 Mr. Francis is doing in his report.

9 54. But the method (whether I support it or not) is not valid unless you are  
10 including all of the effort that went into the entire project. This is where Mr. Francis'  
11 calculation goes "off the rails," as he explicitly limited his analysis to a small  
12 portion of the product from which NOPIXEL generated revenues: "As such,  
13 extensive effort was made to focus my review solely on the BACKEND CODE,  
14 and all calculations, findings and informed opinions represented in this report relate  
15 to the BACKEND CODE unless explicitly stated otherwise." (see Francis Expert  
16 Report, P. 7).

17 55. In other words, rather than calculating the percentage of effort that the  
18 identified BACKEND CODE repository represents (the numerator) as compared  
19 to the total effort on the project as a whole (the denominator), Mr. Francis carves  
20 away portions of the overall project, thus making the denominator smaller. He  
21 explains his logic as follows: "I am aware that KOIL has taken a position regarding  
22 an apparent lack of similarity between DANNY's original code and the GAME  
23 CODE found in KOIL's REPOSITORIES, but I am also aware that TOVE is  
24 making no claim to any GAME CODE written by DANNY. As such, extensive  
25 effort was made to focus my review solely on the BACKEND CODE, and all  
26 calculations, findings and informed opinions represented in this report relate to the  
27  
28

1 BACKEND CODE unless explicitly stated otherwise." (see *Francis Expert Report*,  
2 P. 7).

3 56. In other words, Mr. Francis' conclusion and opinion is essentially:  
4 Tracey did not do much work on the GAME CODE so let's not include it in the  
5 denominator. The smaller the denominator, the bigger the percentage. In fact, if we  
6 were to eliminate every line of code that Danny did *not* write, the numerator and  
7 the denominator would be the same number, and the percentage would be 100%.

8 57. Basically, if you narrow the definition of the 'pond' enough, even the  
9 smallest minnow will appear to be the 'big fish'. As a result of only considering  
10 the 'small pond', Mr. Francis was able to make *improper sweeping generalizations*  
11 *such as*:

12 A. DANNY's contribution percentage to ITSKOIL/nopixel-  
13 mgmt-api on Dec 15, 2022 (**80%**) *id.*, P. 10;

14 B. DANNY's contribution percentage to ITSKOIL/nopixel-  
15 mgmt-api on Mar 14, 2023 (**71%**) *Id.*

16 C. *Seven months after DANNY's departure, his attributions*  
17 *accounted for a little less than **half of the code base***  
18 ***being discussed.** Id.*, emphasis added.

19  
20 58. Essentially, what Mr. Francis is doing is identifying a repository that  
21 was Danny's personal repository where he did his work, and then calculating a  
22 percentage of the work that he did in his own repository. With that understanding,  
23 I'm surprised the numbers aren't higher. In a nutshell, Mr. Francis' conclusions and  
24 his inflated percentages are the result of careful tailoring of "the code base being  
25 discussed" and result in overinflated conclusions.  
26  
27  
28

## TESTIMONY CONCERNING THE PROPER CALCULATIONS

59. To determine the correct percentages, I took another approach. On page 7 of his report, Mr. Francis identifies the repository **ITSKOIL/nopixel-mgmt-api** as the location of Mr. Tracey's code, while the repository **ITSKOIL/nopixel** represents the remainder of the NOPIXEL project. This would mean that if you summed the statistics of those two repositories, you would have the totals for the entire project. *This is confirmed by Mr. Francis when he states on pages 11-12 of his report that the KOIL spreadsheet did not include the MANAGEMENT API & DASHBOARD REPOSITORY, which was a repository outside of ITSKOIL/nopixel.*

60. Therefore, to find the correct percentage of Tracey's contribution, I took the statistics from ITSKOIL/nopixel-mgmt-api and divided those numbers by the entire project, as comprised of the summation of statistics from ITSKOIL/nopixel-mgmt-api and ITSKOIL/nopixel.

61. To accomplish this, I exported from Github all of the raw data associated with each of the repositories in question, ending up with two text files - stats-for-UPD\_July\_19\_2023.txt for the repository ITSKOIL/nopixel and stats-for-mgmt-api\_July\_19\_2023.txt for the repository ITSKOIL/nopixel-mgmt-api. These raw data files list every commit with its associated details, including who made the commit, the number and names of files that were affected, and the number of insertions and deletions. By crunching the data in these raw files, I was able to create charts which are similar those presented by Mr. Francis. These charts are set forth on **Exhibit 6**.

62. To calculate the percentage that Mr. Tracey's code contributes to the overall project for each category, I divided the nopixel-mgmt-api statistics by the totals for the entire project, as represented by the summation of the stats of nopixel-mgmt-api and nopixel. These calculations are attached hereto as **Exhibit 7**.

63. Finally, to calculate a total percentage of contribution, *I used Mr. Francis' chosen methodology* of averaging the five calculated averages above ("To calculate a total percentage of attribution, the method chosen was to average the percentage of insertions, deletions, files, COMMITS and lines changed." *Francis Report, id. at pg. 11*). **That calculation results in a total contribution percentage for Mr. Tracey's code when compared to the entire NOPIXEL project of 0.57%.**

#### PLAINTIFF'S FLAWED SOURCE CODE ANALYSIS

64. I am informed that the dispute in this case is over *source code* contributions to the NoPixel project. It is well known that commits to a GitHub repository include many different files and file types. While source code files written or modified by the contributor can represent a subset of the files committed, a commit can also include many other files that would not be considered to be source code.

65. Such non-source-code files and types include the obvious, such as images, audio, maps, etc. Also included are large, auto-generated data files, third-party programs such as tools and utilities, JSON blobs, config files, etc.

66. Mr. Francis' "Findings" on pages 8-11 of his report (which include the overinflated percentages of DW's contribution as discussed above) show that *no effort was made to identify source code from any of the myriad other file types in any of the commits in his analysis.*

67. Listing commits and commit stats from GitHub includes many files that do not belong in a source code analysis. To put a finer point on this distinction, in addition to obtaining commits and commit stats from GitHub one must filter the stats by file type. In my experience this requires writing programs designed specifically to filter commit reports. *There is no indication that Mr. Francis performed any such programmatic analysis.*



1           68. Thus *Mr. Francis' "findings" cannot be relied upon in any analysis*  
2 *of DW's contribution of source code to the project.*

### 3 4                   **ONBOARDING PROCESS AND TERMS OF SERVICE**

5           69. The objective of Mr. Francis' Supplemental Report (page 17), was to  
6 "provide an expert opinion on whether or not the codebase [he] examined permitted  
7 an individual to join and play on the NOPIXEL SERVER without completing the  
8 STANDARD ONBOARDING process." On page 22 of his new report, after his  
9 analysis, Mr. Francis offers the opinion that "it is 'possible', and in more than one  
10 way, to join and play on the NOPIXEL SERVER without having to complete the  
11 entire STANDARD ONBOARDING flow," a conclusion with which I disagree.

12           70. In fact, Mr. Francis offers no concrete evidence that his Scenario A  
13 process actually works. Even with access to the project source, *Mr. Francis fails to*  
14 *cite any lines of code which prove that the navigational flow that he describes*  
15 *would successfully allow one to access the site and upload code and assets without*  
16 *having agreed to the terms of service.* In fact, if the Scenario A process actually  
17 worked as claimed, there is no reason that Mr. Francis could not have simply  
18 submitted a video of himself performing the process one step at a time as described  
19 in his analysis, thus demonstrating that Scenario A is a valid way to access the site  
20 without having agreed to the terms of service. Mr. Francis offers no such proof.

21           71. In fact, Mr. Francis' conclusion that the Scenario A process as  
22 described would allow one to join and play on the NOPIXEL server without  
23 completing the STANDARD ONBOARDING process cannot occur.

24           72. In Mr. Francis' stated conclusion, it is important to note that he phrases  
25 a hypothetical user's actions in the present tense - "it is possible, and in more than  
26 one way, to join and play on the NOPIXEL SERVER without having to  
27 complete..." The correct question is whether or not it was possible in 2020, when  
28

1 Mr. Tracey registered on the website (which is April 22, 2020; *see MC 0044-MC*  
2 *0046*). In that context, *Mr. Francis' analysis is irrelevant as it does not reflect how*  
3 *the site worked in or around April of 2020.*

4 73. This becomes obvious when one reviews the process of Scenario A by  
5 which Mr. Francis claims that one would bypass the standard onboarding process,  
6 as described on page 18: "From this examination I concluded that when a player  
7 clicks on "connect" from <https://www.nopixel.net/>, without first creating an  
8 account, the game authenticates with Steam (a popular gaming service)  
9 programmatically."

10 74. **Exhibit 8**, however, is the cited website [www.nopixel.net](http://www.nopixel.net) as it exists  
11 today. Note that, for ease of navigation for a user who wants to get into a play  
12 session as quickly as possible, a list of servers with "connect" buttons is included  
13 on the [www.nopixel.net](http://www.nopixel.net) page (highlighted). I assume that these are the "connect"  
14 buttons that Mr. Francis is referring to.

15 75. However, in the 2020 timeframe in which Mr. Tracey first registered  
16 for the community, *there were no "connect" buttons on the www.nopixel.net*  
17 *website for the user to click on.* In fact, as shown on **Exhibit 9** is an image from  
18 YouTube video - "How to Join the MOST POPULAR GTA 5 RP Servers!  
19 (NoPixel, RedlineRP, GTA:World, and more!)". This shows that, as of October 26,  
20 2020 (the video publication date), there were choices to "Log in" and "Register"  
21 (highlighted) but *there was no button to directly connect.*

22 76. Approximately seven (7) months after the above referenced  
23 [www.nopixel.com](http://www.nopixel.com) design, a small design change was made, as evidenced by the  
24 video cite contained on **Exhibit 10**, published on YouTube in May of 2021. While  
25 similar to the previous version of [www.nopixel.com](http://www.nopixel.com) (above), this update added the  
26 ability to "login using discord" (a popular multiplayer gaming helper application),  
27 once again highlighted in red. However, of note, as of May of 2021, *there were still*  
28

1 *no "connect" buttons as required by Mr. Francis' suggested method of entry into*  
2 *the site.*

3 77. I also confirmed through archive.org that, as of May 1, 2021,  
4 *www.nopixel.net did not offer a way for a user to directly connect to a server.* This  
5 is attached hereto as **Exhibit 11** (noting the archive.org date notation in the upper  
6 right corner of the image).

7 78. *Mr. Francis' claim that the Scenario A process as described would*  
8 *allow one to join and play on the NOPIXEL server without completing the*  
9 *STANDARD ONBOARDING process is, therefore, incorrect.*

10 79. *In fact, the attached evidence proves that the Scenario A method that*  
11 *Mr. Francis claims would enable one to bypass the Terms and Rules agreement*  
12 *was not available as of at least May 1, 2021, and possibly later, at least a year*  
13 *after Mr. Tracey is recorded as registering (April 22, 2020).*

14 80. In addition, to the extent that one was to question the authenticity of  
15 the documents (MC 0044-MC 0046), which show Tracey's registration date on the  
16 site of April 22, 2020, *an equally relevant and irrefutable date is July 31, 2020,*  
17 *which is documented by Github as the first date that Mr. Tracey made a code*  
18 *commit to one of the Koil nopixel source repositories, specific itsKoil/nopixel, as*  
19 *shown below left (the list of commits on July 31, 2020) and the activity report of*  
20 *2020, showing that Mr. Tracey's code work started at the end of July of that year.*

21 **Exhibit 12.**

22  
23 81. In other words, even if one were to question the date of Mr. Tracey's  
24 registration, *it is irrefutable that Mr. Francis' Scenario A process could not have*  
25 *been used to bypass the Terms and Rules agreement until well after Mr. Tracey*  
26 *began submitting code to the NOPIXEL project.*

27 82. In addition, the Scenario A flowchart presented by Mr. Francis on  
28 page 20 of his supplemental report is no longer valid because, as I've shown above,

1 *at the time when Mr. Tracey joined the organization, the "connect" button, which*  
2 *would activate the "Attempt Join Server" function and start the Scenario A flow,*  
3 *was not available on <https://www.nopixel.com>. **Exhibit 13.***

4 83. The objective of Mr. Francis' Supplemental Report, as stated on page  
5 17, was to "provide an expert opinion on whether or not the codebase [he] examined  
6 permitted an individual to join and play on the NOPIXEL SERVER without  
7 completing the STANDARD ONBOARDING process." While it is not explicitly  
8 stated as such, in my opinion, a software expert such as Mr. Francis would  
9 understand the above request for opinion to be referring to the codebase we have  
10 examined **running under normal operation.**

11 84. Mr. Francis offers Scenario B as an example of how "an individual  
12 [could] join and play on the NOPIXEL SERVER without completing the  
13 STANDARD ONBOARDING process." Scenario B suggests that a third party  
14 individual with ADMIN credentials may have helped Mr. Tracey bypass the terms  
15 of service of the website.

16 85. First, this is not a valid answer to the question being proposed. Mr.  
17 Francis has been asked to opine on whether **the codebase that we have been**  
18 **examining, running under normal operation,** allows an individual to access the  
19 NOPIXEL servers without agreeing to the terms of service. In other words, whether  
20 there anything that a user can do during the normal and regular onboarding process  
21 **as it is written in the examined codebase** to skip the point at which they must  
22 agree to the terms of service and still join and play on the server.

23 86. Scenario B, as offered by Mr. Francis, suggests having a third party,  
24 such as an ADMIN, run **software routines that would not normally run in the**  
25 **registration and login onboard process.** This scenario clearly violates the spirit  
26 of the analysis, which is specifically asking about the operation of the normal and  
27 regular onboarding process **as it is written in the examined codebase.**  
28

1 87. Mr. Francis is describing a very serious scenario, in which a 3rd party  
2 ADMIN (or Koil employee) stepped in to bypass the security safeguards in the  
3 system in order to allow an outsider to bypass the terms of service of the site. A  
4 breach of this nature could very well lead to a situation where one could attempt to  
5 falsely claim ownership of intellectual property that has been uploaded to the  
6 NOPIXEL server. If Mr. Francis believes that such a scenario was used when Mr.  
7 Tracey joined the NOPIXEL community, further investigation (even potentially  
8 criminal in nature) may need to be undertaken.  
9

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Dated: 8/19/2024  
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Garry Kitchen  
Shingle Springs, California  
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**EXHIBIT 1**

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**Garry E. Kitchen**  
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## EDUCATION

**Bachelor of Science, Electrical Engineering**, 1980  
Fairleigh Dickinson University, Teaneck, New Jersey  
Eta Kappa Nu Honor Society, 1977-1980  
Engineering Merit Scholarship - Matsushita Corp, 1978-1979

## AFFILIATIONS

International Game Developers Association (IGDA)  
Academy of Interactive Arts and Sciences (AIAS)  
Institute of Electrical & Electronics Engineers (IEEE)  
Eta Kappa Nu - Honor Society of the IEEE  
National Academy of Television Arts & Sciences (NATAS)  
Board of Advisors – National Videogame Museum ([nvmusa.org](http://nvmusa.org))  
Board of Advisors – Fairleigh Dickinson University School of the Arts  
BOSSLEVEL - The World's Top 100 Game Developers (invitation only)  
*Elite Expert* for IMS Expert Services, Pensacola, Florida  
Guidepoint Global (FNA Vista Research - Society of Industrial Leaders)  
Coleman Research Group

## EXPERIENCE

- Conceived and led development of Nickelodeon's AddictingGames mobile app for iOS, which rose to #1 in the Apple app store within 72 hours of launch, becoming the most downloaded app in Viacom's history.
- 30+ years of technical management experience running game development companies, with an unmatched 17 years of management experience in Internet gaming.
- Hands-on technical and creative experience in all genres of game development, including console, PC retail and download, online, mobile and dedicated electronic.
- Leading Expert Witness for the video game industry, with over 30 years of experience in technical consulting on patent infringement, copyright, software development, and business issues for clients such as Nintendo, Sony Computer Entertainment, Zynga, Activision, Taito, and Hasbro (see **Expert Consulting Experience** section below).



**Garry E. Kitchen**

Page 2

**EXPERIENCE**

(cont'd)

- Strategic business planning - a history of anticipating and influencing industry trends with pioneering initiatives:
  - 1980** Reverse engineered the Atari 2600 in anticipation of the video game revolution
  - 1986** Established the 1st North American-based Nintendo development studio
  - 1996** Pioneered *Advergaming* with the launch of LifeSavers' Candystand.com
  - 2005** Applied dynamic in-game advertising technology to casual games
  - 2008** Repositioned Skyworks as leading iPhone publisher with over 25M downloads
- Expertise in developing comprehensive business plans, with application toward raising investment capital, through IPO or private equity placement.
- Recognized as an industry expert in video gaming by numerous trade conferences, including Digital Hollywood, iMedia Breakthrough, GDC, CES, Gamer Technology Conference, Casual Game Conference, Advertising in Games conference, VNU Digital Marketing conference, National Cable Show and the QualComm QTech conference.
- Experience in dealing with broadcast and print media, including CNBC, ABC Eyewitness News, CNN, Good Morning Atlanta, The Today Show, Business Week and various consumer and trade publications.
- Personally developed video game software products generating career retail sales in excess of \$350 million.
- Co-founded Skyworks Technologies, Inc., an industry pioneer in *Advergaming* - sponsorship-supported video games used as advertising vehicles. Skyworks was named a Top 50 Interactive Agency by Advertising Age for the years 2003 and 2004. Skyworks' client list included Nabisco/Kraft Foods, BMW, Toyota, Ford, PepsiCo, Campbell's, Fox Sports, CBS, Mattel, Weather Channel, Microsoft Network, Yahoo!, Miller Brewing Company, GlaxoSmithKline and MTV.
- Developed strategy and business plan for the Casual Games Network (CGN), Skyworks' initiative applying dynamic in-game advertising to online casual games, partnering with Massive Incorporated.

**Garry E. Kitchen**  
Page 3

**EXPERIENCE**  
(cont'd)

- Co-founded Absolute Entertainment, Inc., console game publisher licensed by Nintendo, Sega, Sony, 3DO and Atari and video game developer of over 100 marketed titles from 1986 to 1995, generating product retail sales of over \$300 million. Successfully lead Absolute through oversold IPO, raising \$12 million.
- Consulted for RCA David Sarnoff Research Labs (1986-1987) on entertainment applications of Digital Video Interactive (DVI), the first technology to store digital full-motion video on a CDROM.
- Designed & programmed Atari 2600 adaptation of hit arcade game Donkey Kong, 1982 wholesale revenues in excess of \$100 million on four million units sold.
- Conceived, designed and developed Bank Shot, an innovative electronic pool game marketed by Parker Brothers, named "10 Best Games of 1980", *Omni Magazine*.
- Reverse-engineered Atari 2600 game system in 1980, creating one of the first third party 2600-compatible game cartridges - Space Jockey.

**EMPLOYMENT HISTORY**

**President/CEO**

Audacity Games Inc, Danville, California  
March 2021 - Present

**President/CEO**

SGK Service Inc., Danville, California  
March 2007 - Present

**Vice President Game Publishing**

Viacom Media Networks, San Francisco, California  
December 2010 - May 2012

**Chief Operating Officer**

Skyworks Interactive, Inc., Hackensack, New Jersey  
December 2007 - September 2009

**Garry E. Kitchen**  
Page 4

**EMPLOYMENT HISTORY**  
(cont'd)

**Chairman, President & CEO**

Skyworks Technologies, Inc., Hackensack, New Jersey  
November 1995 - December 2007

**Chairman, President & CEO**

Absolute Entertainment, Inc., Upper Saddle River, New Jersey  
March 1986 - November 1995

**Senior Designer**

Activision, Inc., Mountain View, California  
June 1982 - March 1986

**Engineer/Designer**

James Wickstead Design Associates, Cedar Knolls, New Jersey  
April 1976 - October 1981

**HONORS AND AWARDS**

- U.S. Patent #8,407,090  
Dynamic reassignment of advertisement placements to maximize impression count  
Publication date – March 26, 2013
- 2012 Official *WEBBY AWARD* Honoree - Games (Handheld Devices)  
AddictingGames Mobile for iOS platform  
*International Academy - Digital Arts & Sciences WEBBY AWARDS - 2012*
- Nomination to *Board of Advisors*  
*Video Game History Museum (www.vghmuseum.org) - 2010*
- Nomination as an *Elite Expert* by IMS Expert Services  
*IMS Expert Services (www.ims-expertservices.com) - 2009*
- Nomination to the Advisory Committee: "Reinventing Advertising: VOD, PVR, Broadband, Games, PODs & Mobile Consortium"  
*Digital Hollywood - 2005, 2006*

**Garry E. Kitchen**

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## **HONORS AND AWARDS**

(cont'd)

- 2004 Nominee – *Advergame of the Year*  
The BMI X3 Adventure  
*Billboard Digital Entertainment Awards (DECA)*
- Lifetime Achievement Award in Video Games  
*Classic Gaming Expo – 2003*
- New Jersey Entrepreneur of the Year - Finalist  
*Inc. Magazine, Merrill Lynch and Ernst & Young - 1993*
- Best Simulation Game  
Super Battletank  
*Game Informer Magazine - 1992*
- Sega Seal of Quality Award Nominee - Best Flying/Driving Genesis  
Super Battletank  
*Sega of America - 1992*
- Lifetime Achievement Award in Video Games  
*The Doctor Fad Show*  
Syndicated educational television program - 1990
- Video Game Designer of the Year  
*Computer Entertainer Magazine - 1985*
- Best Creativity Product - Nominee  
Garry Kitchen's GameMaker  
*SPA Excellence in Software - 1985*
- Video Game of the Year - Certificate of Merit  
Keystone Kapers  
*Electronic Games Magazine - 1983*
- U.S. Patent #4,346,892  
Electronic Pool Game  
Bank Shot – handheld game marketed by Parker Brothers - 1981
- Ten Best Games of 1980  
Bank Shot  
*OMNI Magazine - 1980*

**Garry E. Kitchen**

Page 6

**HONORS AND AWARDS**

(cont'd)

- The Games 100 - The Top 100 Games of 1980

Bank Shot

*Games Magazine* – 1980

- Engineering Merit Scholarship  
Panasonic / Matsushita Corporation of Japan  
Fairleigh Dickinson University - 1978, 1979

**Garry E. Kitchen**

Page 7

**SOFTWAREOLOGY**

| <u>TITLE</u>                            | <u>PLATFORM</u> | <u>YEAR</u> | <u>PUBLISHER/<br/>LICENSEE</u> | <u>ROLE</u>                    |
|---|-----------------|-------------|--------------------------------|--------------------------------|
| Wildfire                                | Electronic Toy  | 1979        | Parker Brothers                | Software                       |
| Bank Shot                               | Electronic Toy  | 1980        | Parker Brothers                | Design/Software                |
| Space Jockey                            | Atari 2600      | 1980        | U.S. Games                     | Design/Software                |
| 3D Supergraphics (with P. Lutus)        | Apple II        | 1980        | United Software of America     | Assembly Language demos        |
| Reversal                                | Atari 400/800   | 1981        | Hayden Publishing              | Atari conversion from Apple II |
| Bellhop                                 | Apple II        | 1982        | Hayden Publishing              | Co-design/Software             |
| Donkey Kong                             | Atari 2600      | 1982        | Coleco                         | Software                       |
| Keystone Kapers                         | Atari 2600      | 1983        | Activision                     | Design/Software                |
| Pressure Cooker                         | Atari 2600      | 1983        | Activision                     | Design/Software                |
| Crackpots                               | Atari 2600      | 1983        | Activision                     | Software                       |
| Ghostbusters                            | Atari 2600      | 1985        | Activision                     | Software                       |
| Kung Fu Master                          | Atari 2600      | 1987        | Activision                     | Art/Software                   |
| Pete Rose Baseball                      | Atari 2600      | 1988        | Absolute                       | Co-design/Software             |
| The Designer's Pencil                   | C64             | 1984        | Activision                     | Design/Software                |
| Ghostbusters                            | C64             | 1984        | Activision                     | Additional Software            |
| Garry Kitchen's GameMaker               | C64             | 1985        | Activision                     | Design/Software                |
| Crossbow                                | C64             | 1986        | Absolute                       | Co-design/Software             |
| Stealth ATF                             | NES             | 1989        | Activision                     | Co-design/Software             |
| A Boy and His Blob                      | NES             | 1990        | Absolute                       | Co-design/Software             |
| Battletank                              | NES             | 1990        | Absolute                       | Design/Software                |
| Destination Earthstar                   | NES             | 1990        | Acclaim                        | Co-design/Software             |
| The Simpsons: Bart vs the Space Mutants | NES             | 1991        | Acclaim                        | Co-design/Software             |
| Home Alone                              | SNES            | 1992        | THQ                            | Co-design/Software             |
| Super Battletank: War in the Gulf       | SNES            | 1992        | Absolute                       | Design/Software                |
| The Simpsons: Bart vs the World         | NES             | 1992        | Acclaim                        | Co-design/Software             |
| Klondike Solitaire                      | SEGA Channel    | 1995        | SEGA                           | Co-design/Art                  |
| Super Battletank 2                      | SNES            | 1993        | Absolute                       | Co-design/Software             |
| LifeSavers Chomp                        | CDROM           | 1996        | LifeSavers                     | Co-design/Software             |
| Candystand Yipes Hang Gliding           | Web/online      | 1997        | LifeSavers                     | Design/Software                |
| Candystand Yipes Skate Race             | Web/online      | 1997        | LifeSavers                     | Design/Software                |
| Candystand Video Poker                  | Web/online      | 1997        | LifeSavers                     | Design/Software                |

|  |              |      |                 |                 |
|--|--------------|------|-----------------|-----------------|
| Candystand Yipes Coloring Book         | Web/online   | 1997 | LifeSavers      | Design/Software |
| Candystand Grafitti Contest            | Web/online   | 1997 | LifeSavers      | Design/Software |
| Candystand Where in the world...       | Web/online   | 1997 | LifeSavers      | Design/Software |
| Bet Your Lifesavers TV Trivia          | Web/online   | 1997 | LifeSavers      | Design/Software |
| Candystand Snowboarding                | Web/online   | 1997 | LifeSavers      | Design/Software |
| Nabisco Chipulator                     | Web/online   | 1997 | Nabisco         | Design/Software |
| Bubble Yum Screensaver                 | Web/online   | 1998 | LifeSavers      | Design/Software |
| Candystand Gummiworks Construction Kit | Web/online   | 1998 | LifeSavers      | Design/Software |
| Ford Basketball Shootout               | Web/online   | 1998 | Ford            | Design/Software |
| H.O.R.S.E. Basketball Shootout         | Web/online   | 1998 | Sportcut        | Design/Software |
| Bet Your Lifesavers '80s TV Trivia     | Web/online   | 1998 | LifeSavers      | Design/Software |
| Fruit Stripe Puzzle game               | Web/online   | 1999 | LifeSavers      | Design/Software |
| Ford Fallout                           | Web/online   | 1999 | Ford            | Design/Software |
| Premium Jigsaw Puzzle Palace           | Web/online   | 1999 | Nabisco         | Design/Software |
| Nabiscoworld Ball Toss                 | Web/online   | 1999 | Nabisco         | Design/Software |
| Nabiscoworld Holiday House             | Web/online   | 1999 | Nabisco         | Design/Software |
| Nabiscoworld Greeting Cards            | Web/online   | 1999 | Nabisco         | Design/Software |
| S.I. H.O.R.S.E. Basketball Shootout    | Web/online   | 1998 | CNN/SI          | Design/Software |
| Candystand Flavor Factory              | Web/online   | 2000 | LifeSavers      | Design/Software |
| Candystand 2 Minute Drill              | Web/online   | 2000 | LifeSavers      | Design/Software |
| Cornnuts Nuttin' But Net               | Web/online   | 2000 | Nabisco         | Design/Software |
| Bell Atlantic Nothing But Net          | Web/online   | 2000 | Bell Atlantic   | Design/Software |
| Home Run Derby                         | Web/online   | 2001 | Century 21      | Design/Software |
| Big League Bash                        | Web/online   | 2001 | Fox Sports      | Design/Software |
| Kraft Puzzle Maker                     | Web/online   | 2001 | Kraft           | Design/Software |
| GSK Trivia                             | CDROM        | 2001 | GSK             | Design/Software |
| Stars Academy Mess of Mass             | Web/online   | 2001 | Stars Academy   | Design/Software |
| Stars Academy Space Trivia             | Web/online   | 2001 | Stars Academy   | Design/Software |
| GSK Coloring Book                      | Web/online   | 2001 | GSK             | Design/Software |
| Big Barney Chase board game            | Web/online   | 2001 | Kraft/Post      | Design/Software |
| Mission Code Red                       | Web/online   | 2001 | Pepsi           | Design/Software |
| Trolli Kaboom                          | Web/online   | 2002 | LifeSavers      | Design/Software |
| Candy Drops                            | Web/online   | 2002 | LifeSavers      | Design/Software |
| Smack Dab in the Middle                | Web/online   | 2002 | Nabisco         | Design/Software |
| Intelsat Satellite game                | CDROM        | 2002 | Intelsat        | Design/Software |
| Red & Ned racing                       | Web/online   | 2002 | Kraft           | Design/Software |
| Tombstone Racer                        | Web/online   | 2003 | Tombstone Pizza | Design/Software |
| Barney Spy Caper                       | Web/online   | 2005 | Kraft/Post      | Software        |
| Dandy Drops                            | Web download | 2004 | Skyworks        | Design/Software |



|                           |                 |      |                |                         |
|---------------------------|-----------------|------|----------------|-------------------------|
| VU Role Playing Game      | Web/online      | 2004 | LifeSavers     | Design/Software         |
| Acrobats                  | Web/online      | 2004 | Nabisco        | Design/Software         |
| Air Hockey                | Web/online      | 2004 | LifeSavers     | Design/Software         |
| Poker Puzzle              | Web/online      | 2004 | Nabisco        | Design/Software         |
| Board Game of Life        | Web/online      | 2004 | Fidelity       | Design/Software         |
| Swap and Drop             | Web/online      | 2004 | Weightwatchers | Design/Software         |
| Craver Catch              | Web/online      | 2005 | Kraft/Post     | Design/Software         |
| Acrobats Deluxe           | Web<br>download | 2005 | Skyworks       | Design/Software         |
| March of the Penguins     | DS              | 2006 | DSI            | Design                  |
| Grind and Grab            | Web/online      | 2006 | LifeSavers     | Design/Software         |
| Spiderman City game       | Web/online      | 2007 | Kraft/Nabisco  | Design/Software         |
| Arcade Hoops              | iOS             | 2008 | Skyworks       | Co-design/Software      |
| Arcade Bowl               | iOS             | 2008 | Skyworks       | Software                |
| Air Hockey                | iOS             | 2009 | Skyworks       | Design                  |
| World Cup Table Tennis    | iOS             | 2009 | Skyworks       | Exec<br>Producer/Design |
| Match 3 Poker             | iOS             | 2009 | Skyworks       | Design/Software         |
| Skyscrapers               | iOS             | 2009 | Skyworks       | Design/Software         |
| Iron Horse                | iOS             | 2010 | AppStar Games  | Co-design               |
| Fling Pong                | iOS             | 2010 | AppStar Games  | Design/Software         |
| Leslie West String Benda' | iOS             | 2010 | AppStar Games  | Co-design               |
| Jelly Cannon              | iOS             | 2012 | Nickelodeon    | Executive Producer      |
| Addicting Games           | iOS             | 2012 | Nickelodeon    | Exec<br>Producer/Design |
| Scribble Hero             | iOS             | 2012 | Nickelodeon    | Executive Producer      |
| Circus Convoy             | Atari 2600      | 2021 | Audacity Games | Co-designer/Art         |

**Garry E. Kitchen**  
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## WRITTEN PUBLICATIONS

*"Atari 2600 / 7800: A Visual Compendium"* Foreword, Copyright 2019, Bitmap Books

Medium.com

*"How I Spent My Summer of 1982: The making of Donkey Kong for the Atari 2600"*, October 28, 2020

*"My Strangest Business Deal Ever: What's the name of a \$66M aircraft really worth?"* October 29, 2020

*"How I fixed Atari's Awful Music: And Got Over My Fear of Out-of-Tune Game Toons"*, November 8, 2020

*"The Voice Scrambling Helmet: Adventures in Toy Design: Part 1"*, November 11, 2020

*"Designing an Electronic Toy – Wildfire Pinball"*, November 27, 2020

*"It's just an electronic toy, officer: Adventures in Toy Design: Part 2"*, November 30, 2020

*"The Origins of Computer Mahjong: The amazing story of its development."* December 18, 2020

*"Activision, Atari, Absolute: How Video Game Companies Once Gamed the Alphabet for an Inside Joke: Notes from a retro game designer"*, January 4, 2021

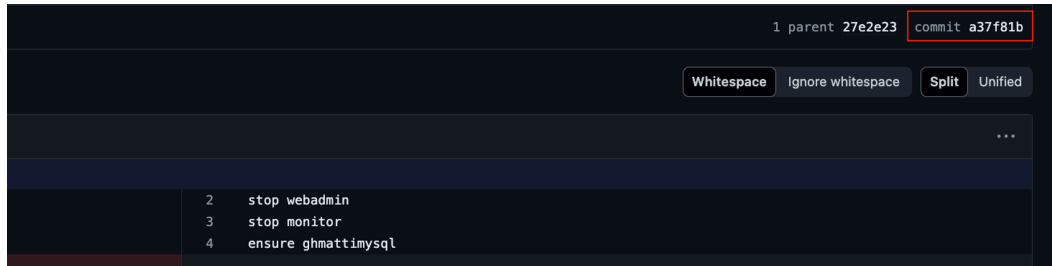
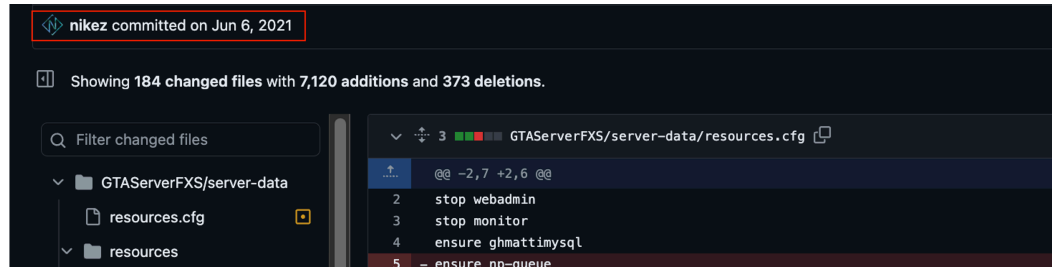
*"The товарищ (comrades) across the hall: My first job (1969) – NYC, teletypes and espionage"*, February 2, 2021

*"What's Under those PW Dots? I don't like when my computer hides things from me."*, February 4, 2021

*Geoffrey the Giraffe and the Tale of Two Cheeks: The Story of the Crossbow Home Video Game"*, February 8, 2021

## EXHIBIT 2

The image below shows the detail of the commit a37f81b, with highlights in red showing the developer (nikez), date (June 6, 2021), the commit hash first 7 digits (a37f81b), and file count.



*Commit a37f81bd8a46b44ce60635cdbe5fcca95d5707ea deployed on June 6, 2021*

### EXHIBIT 3

```
2 + import moment from 'moment';
3 + import { tebexPackages } from '../helpers/tebex/packages';
4 + import { TebexError } from '../helpers/tebex/error';
5 + import { postEmbeddedLink } from '../helpers/discord';
6 + import Config from '../config';
7 +
8 + const Handlers = {};
9 +
10 + const getExpirationTimestamp = (pPurchaseDate: number, pAmount: number, pPeriod: string) => {
11 +   return moment
12 +     .unix(pPurchaseDate)
13 +     .add(pAmount, `${pPeriod}s` as moment.unitOfTime.Base)
14 +     .unix();
15 + };
16 +
17 + async function ProcessCompletedPayment(tebexPayment: TebexPaymentData): Promise<void> {
18 +   try {
19 +     const purchaseData = {
20 +       txn_id: tebexPayment.payment.txn_id,
21 +       purchased_at: tebexPayment.payment.timestamp,
22 +       uuid: `fivem:${tebexPayment.customer.uuid}`,
23 +     };
24 +     const [tbxPurchaseData, errMsg] = await SQL.execute(
25 +       `INSERT INTO _tebex_purchase (txn_id, purchased_at, uuid) VALUES(@txn_id,
26 +       @purchased_at, @uuid)`,
27 +       purchaseData,
28 +       true,
29 +     );
30 +     if (tbxPurchaseData !== undefined && tbxPurchaseData.length !== 0) {
31 +       await Promise.all(
32 +         tebexPayment.packages.map(async (tPackage) => {
33 +           const packageData = tebexPackages.get(tPackage.package_id);
34 +           if (packageData) {
```

*misc/nopixel-api/src/controllers/tebex/hooks.ts*

**EXHIBIT 4**

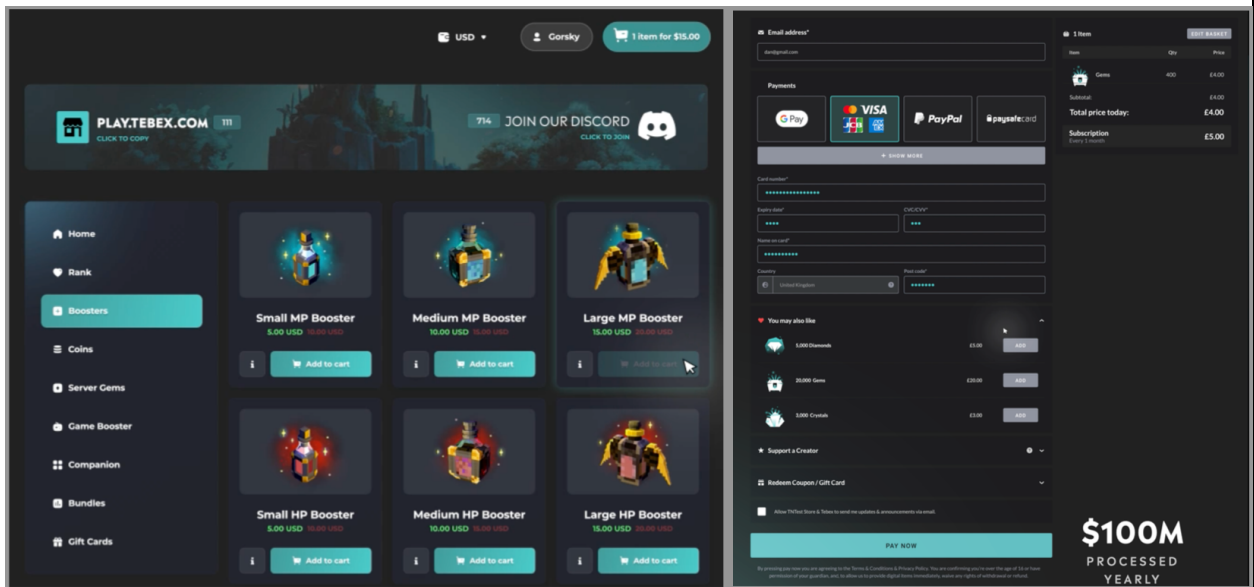
**8. Transactions**

If you wish to purchase Priority Access to a Server or to pay the Application Fee for the Primary Server, you are required to pay the applicable monthly purchase price. Unless otherwise indicated, all fees and other charges are in U.S. dollars.

1. **Billing and Account Information.** We partner with Tebex Limited and Tebex Inc. ("**Tebex**") ([www.tebex.io](http://www.tebex.io)) in connection with the sales of Priority Access and other products and services made within the nopixel Store. If you wish to purchase anything via the nopixel Store, you must do so through Tebex. In order to make any such purchase from Tebex, you must agree to their terms, available at [checkout.tebex.io/terms](https://checkout.tebex.io/terms) (the "**Tebex Terms**"). If you have any billing or transactional inquiries regarding a purchase made through Tebex, you should contact Tebex support at [www.tebex.io/contact/checkout](https://www.tebex.io/contact/checkout) in the first instance. You will receive a receipt from the Tebex confirming payment. If your payment is rejected for any reason, including insufficient funds, we reserve the right to contact you directly to seek payment. By using Tebex or any other third party payment platform, you may be subject to the Tebex Terms and other agreements with such Tebex. If Company receives notice that your activity violates any agreement between you and Tebex or any third party platform, Company may, in our sole discretion take action against your Account to bring you into compliance with such agreements. Such actions may include canceling a transaction, suspending your Account privileges and/or removing certain payment methods. You agree to provide current, complete, and accurate purchase information for all transactions conducted via Tebex or any other third party payment platform.

***NOPIXEL TERMS OF SERVICE (7/14/24)***

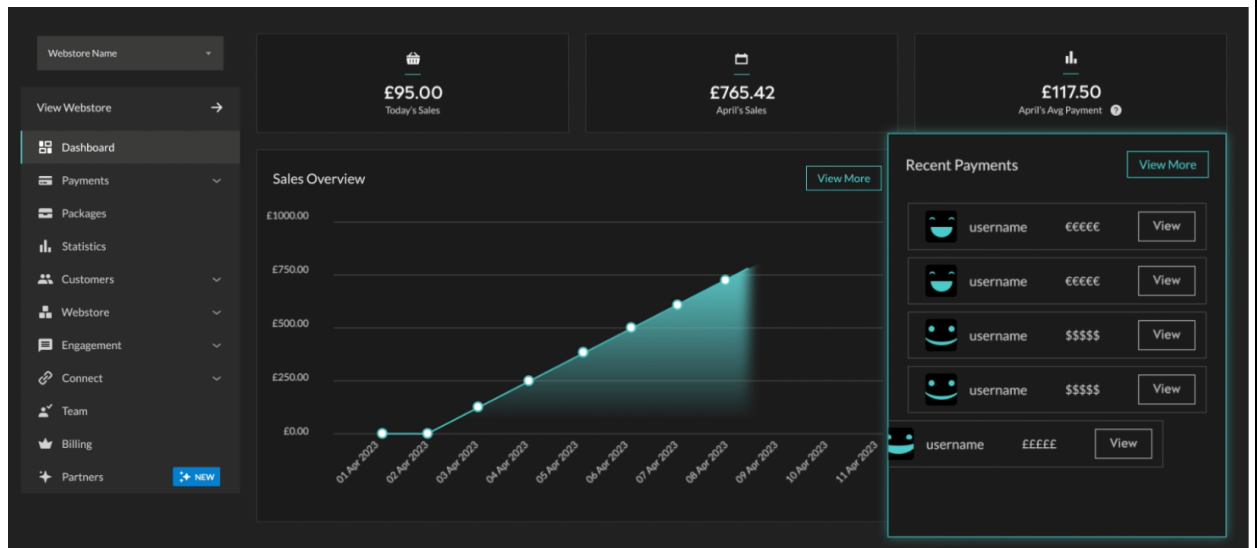
## EXHIBIT 5



TEBEX STORE TEMPLATE

TEBEX SHOPPING CART

TEMPLATE



TEBEX CONTROL PANEL

**EXHIBIT 6**

| ITSKOIL/nopixel-mgmt-api |       | STATS FOR UPD  |          |
|--------------------------|-------|----------------|----------|
| insertions:              | 57330 | insertions:    | 11944764 |
| deletions:               | 27390 | deletions:     | 5102868  |
| files:                   | 1039  | files:         | 331648   |
| commits:                 | 294   | commits:       | 28355    |
| lines changed:           | 84720 | lines changed: | 17047632 |

*ITSKOIL/nopixel-mgmt-api*  
*MANAGEMENT AND DASHBOARD*  
*API REPOSITORY*

*ITSKOIL/nopixel*  
*NOPIXEL PROJECT*  
*(minus nopixel-mgmt-api)*

| STATS FOR (MANAGEMENT API + UPD) |          |
|----------------------------------|----------|
| insertions:                      | 12002094 |
| deletions:                       | 5130258  |
| files:                           | 332687   |
| commits:                         | 28649    |
| lines changed:                   | 17132352 |

*ENTIRE PROJECT*  
*ITSKOIL/nopixel-mgmt-api + ITSKOIL/nopixel*

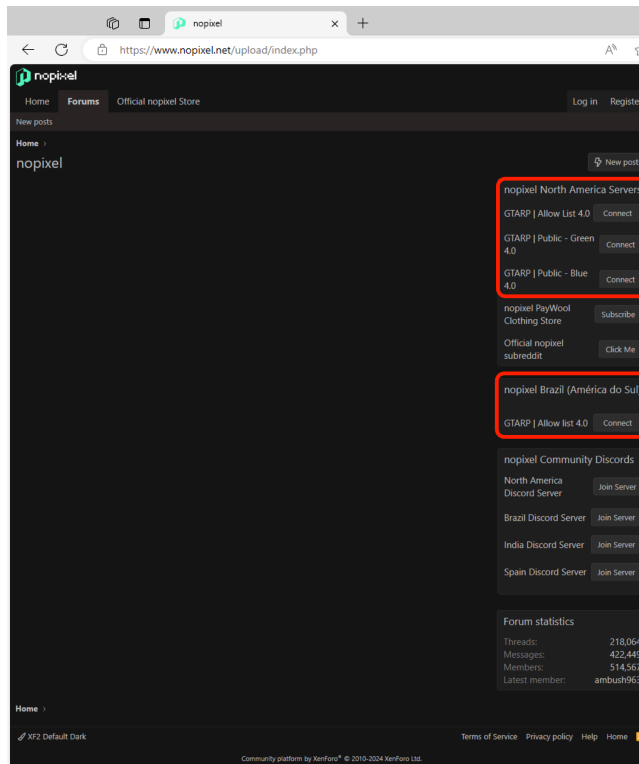
**EXHIBIT 7**

**% CALCULATION FOR  
MANAGEMENT API /  
(MANAGEMENT API + UPD)**

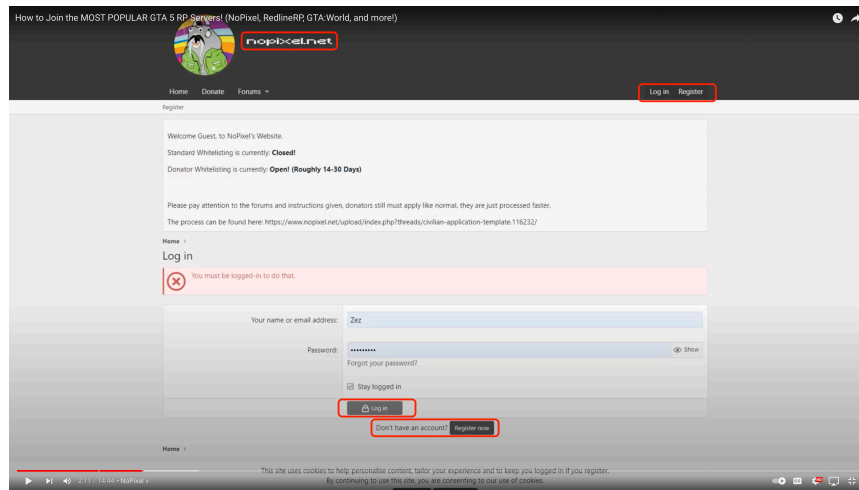
|                |            |       |
|----------------|------------|-------|
| insertions:    | 0.00477667 | 0.48% |
| deletions:     | 0.00533891 | 0.53% |
| files:         | 0.00312306 | 0.31% |
| commits:       | 0.01026214 | 1.03% |
| lines changed: | 0.00494503 | 0.49% |



## **EXHIBIT 8**

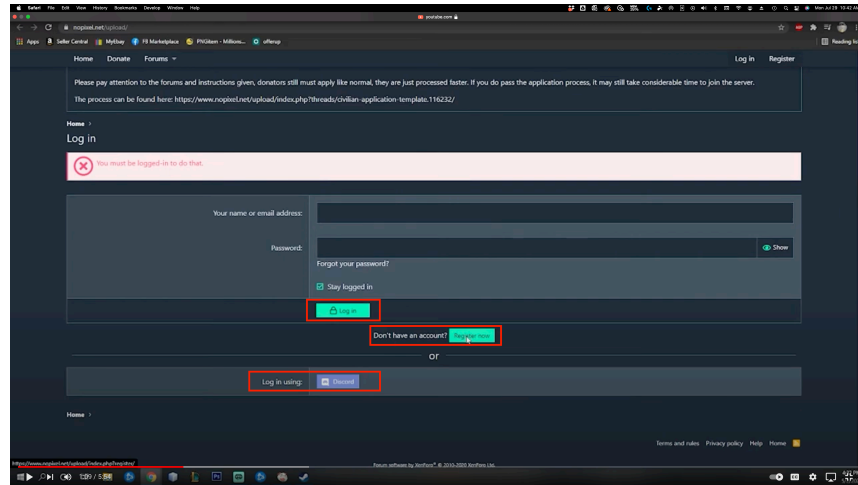


*Web page arrived at by accessing <https://www.nopixel.net>  
(7/29/2024)*

**EXHIBIT 9**

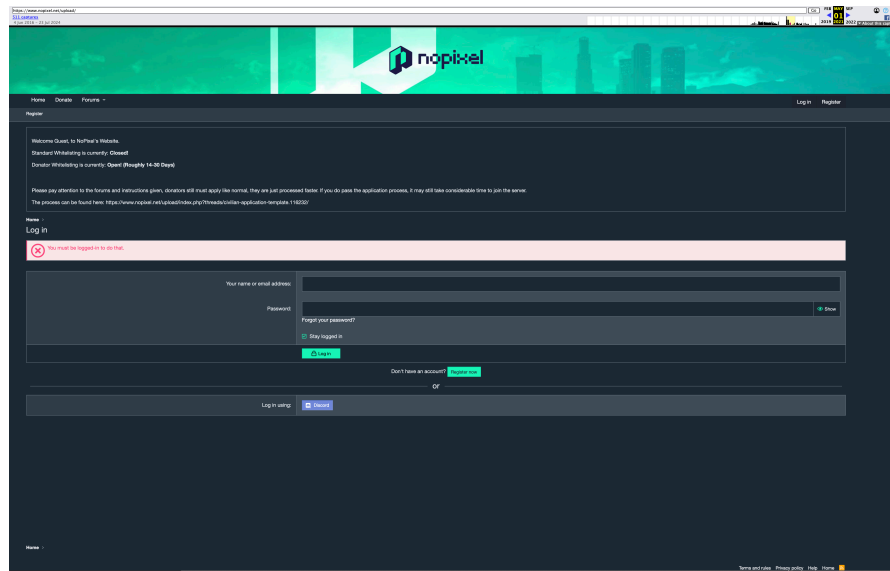
***<https://www.youtube.com/watch?v=khlWPNlxTvI>***

## EXHIBIT 10



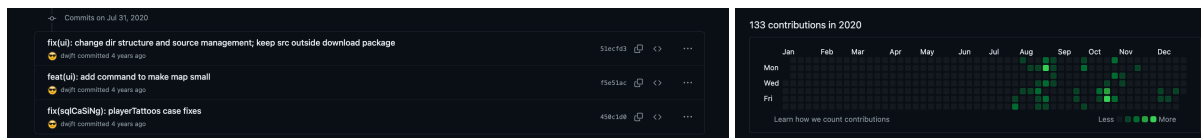
*<https://www.youtube.com/watch?app=desktop&v=VFaeMZnZbuI>*

## EXHIBIT 11

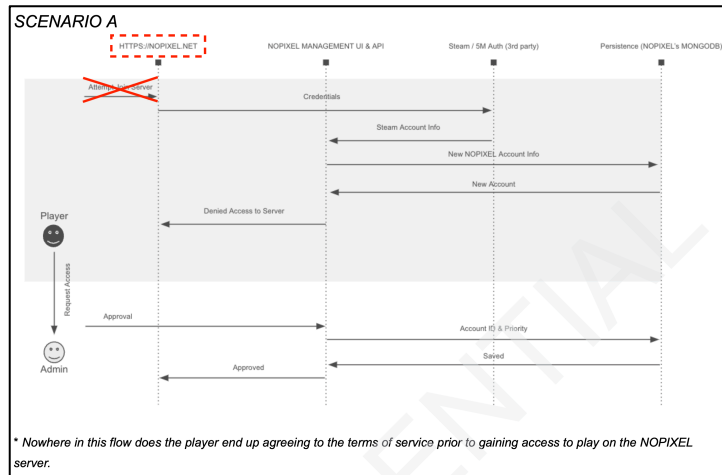


<https://web.archive.org/web/20210501074854/https://www.nopixel.net/upload/>

## EXHIBIT 12



## EXHIBIT 13



*Scenario A flowchart (annotated)*